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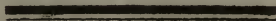
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IMPRISONMENT FOR DEBTS BILL.

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TWO SIDES TO A QUESTION



DEBTOR versus CREDITOR.

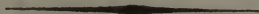


OBSERVATIONS

(THE RESULT OF TWENTY YEARS' EXPERIENCE)

ON THE

IMPRISONMENT FOR DEBTS BILL.



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LONDON:

EFFINGHAM WILSON, 88, Royal Exchange.

1837.

DEPARTMENT FOR DEBTS BILL.

TWO SIDES TO A QUESTION

WATSON & CO. CREDITORS

CONSERVATION

THE DEPARTMENT FOR DEBTS BILL (1914)

DEPARTMENT FOR DEBTS BILL.

RECEIVED

1914

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DEPARTMENT FOR DEBTS BILL (1914)

1914

IMPRISONMENT FOR DEBTS BILL.

DEBTOR *versus* CREDITOR,

§c. §c.

ALTHOUGH the sudden dissolution of the late parliament be on some points matter of regret, yet the inconvenience is somewhat compensated, by its having afforded time for a more mature consideration of one of the most important bills that ever (in a commercial country) engaged the attention of the legislature: viz, "The Imprisonment for Debts Bill." Not that sufficient time has not been spent, or that a profuse quantity of words have not been expended upon it,—but it is evident, that the argument was carried on, during the late parliament, with more regard to party spirit, than was consistent with a question evidently unconnected with party considerations. The attention and the eloquence of honorable members having been so engrossed with the consideration of foreign policy, the drier questions of home policy were, in a great measure, left to take their own chance. Is it not marvellous that no public meetings have been called—that the attention of the public has not been roused—or that the representatives of commercial districts have not been *publicly advised* of the views of their constituents upon this bill;—a bill affecting no less the rights of every honest tradesman's fire-side, than it does our national credit, and that in one of its most *sensitive* points.

There are always two sides to a question; the observation was never more fully verified than upon this occasion; here are the opposite extremes of debtor and creditor. The debtor says, "release me from jail;" the creditor replies, "why did you give me cause to put you there?" and thus the matter is brought to endless recriminating argument.

I think there are few persons who would not prefer *money to revenge*. Upon this principle I infer, that where a debtor can be detained in prison at all, it must be from some gross breach of good faith on his own part.

The press joins in the general outcry against the law of debtor and creditor, as it now stands. The admission into the columns of many of the leading journals of the day of letters, dated from the Queen's Bench and other prisons, evidently betrays a *strong bias* in favor of the confined debtor. But in carrying this *humane bias* into effect, care should be taken that the true laws of humanity be not outraged. There is no law by which the most revengeful creditor can prevent a debtor taking the benefit of the Insolvent Act, within a very few weeks from the filing his schedule, provided it be honest and straight-forward; hence it is idle to dwell upon the harshness of particular cases, where the convicted offender is doing but a just penance for his offences.

It might be inferred, from this mode of reasoning, that these observations are penned by a harsh unfeeling creditor—by one who would wish to double the rigour of the present law—no such thing; the writer it is true is at present on the creditor side of the account; but so convinced is he of the inefficacy of the existing law—so confirmed is he in his opinion, by daily and dearly-bought experience, of the imperfection of the present law, that no one is more *alarmingly* anxious than himself for an alteration.

It would be as well to recal the memory to facts as they have transpired, and from those facts to deduce a judgment upon which to found future improvement. Schedule-making in the Insolvent Court has become such an almost mechanical process, that he who has had the misfortune to examine many of them, has found the same leading items in all! It is the knowledge of this species of ingenuity which deters, or if persevered in, baffles the exertions of creditors, while it holds out a high premium to dishonesty in debtors.

A no less disheartening doubt curbs the exertions of the creditor, while it buoys up the desperate debtor, even to the last moment of the decision of the Court—it is, the impression which might happen to be worked upon the mind of the Court itself, by the merits of the

case, *as adduced in evidence*; and hence it frequently happens, that the difficulty of procuring evidence debars creditors, where time is of value, from incurring a certain *increased expense*, dependent upon an *uncertain issue*!

The most effectual mode of substantiating an argument is by the production of a case in point. A was creditor to B. B had before been insolvent; but, as his misfortunes had arisen from circumstances over which he had no controul, A, in common with the rest of his creditors, accepted a composition upon his then debt; A, with the rest of the creditors, believing B to be an honest man, after receiving a composition, consented to again give him credit for goods; for some months his habits were industrious, he was regular in his payments, and had all the appearance of a man doing well; B by giving to A an acceptance drawn by B upon one of his, B's, customers (stated to be for work and labor done) B contrived to double his account with A but within three days after B removed the whole of his goods and closed his shop, and then submitted to a friendly arrest. The acceptance turned out to be a concocted acceptance, given by a man who also went into jail with B.

A employed an eminent counsel to oppose him on two grounds, first for having obtained goods with the fraudulent intention of never paying for them; and secondly with having obtained them upon false representation—viz: by an acceptance stated to have been “for work and labor done,” whereas it proved to be a fraudulently concocted paper. Even with these facts A's counsel expressed the strongest doubts as to the view *the court might take* of the case, and under his advice A, being the only opposing creditor in the cause, compromised his debt in the best manner he could, to his own loss, and to the future encouragement of dishonest debtors. Had the impression of the court been unfavourable to A he would have not only have lost the whole of his debt, but also have increased his loss by ten pound expences, besides two days loss of time in the court.

It is this never fading hope attendant upon the glorious uncertainty of the law, which I hold to be the great failing principle in the present law of debtor and

creditor. It cannot be denied that imprisonment for debt is the same mode of punishment as that which is applied to offences under the criminal code,—but with this wide distinction, that the street pick-pocket knows before he commits a crime that upon conviction the quantum of his punishment is measured, while the pick-pocket-dishonest debtor is encouraged to plunder his neighbours under the hope of being able to evade the law altogether; and whence does this hope arise? Why from a knowledge of the difficulties in proving a case—from the value of the time of creditors—from a comparison of the great number of dishonest debtors who have escaped, as compared with those who have been brought to punishment—and last not least, that according to the impression worked on the mind of the court, so conviction, and not only conviction but punishment will follow. And why is it that the mind of the court is wrongly impressed? Because the expense, the loss of time, and the difficulty of producing evidence being entirely thrown upon the creditor, it seldom happens that creditors will unite to prove their cases; and hence it is that the court being deficient in evidence can only decide according to the *evidence adduced*.

But the cruelty, the impolicy, the inconsistency of the present law does not end here: the honest debtor, whose inability to meet his engagements has arisen from unforeseen misfortunes, is imprisoned for many weeks before trial and placed upon the same footing as the unprincipled swindler. And here a strong feature, a desire to separate and to class the honest from the dishonest debtor, presents itself for amendment. In seeking to obtain an end how common is it to overlook the means; the end, that is the punishment of the present law, is rigorous in the extreme; but the means, that is, the conviction, is difficult, undefined and uncertain: the error lies in the conviction, not in the degree of punishment, and so long as conviction shall be dependent upon the creditor, whose loss of time and increased law expenses are to be the means of that conviction, so long the chances will remain in favor of the dishonest debtor.

Every man at the time he contracts a debt, is aware, whether by his positive property or by the profits of his trade, or by other expectant resources, he has just

grounds for contracting it. I would upon insolvency being declared, make the SOLVENCY OF THE DEBTOR AT THE TIME A DEBT WAS CONTRACTED, the STANDARD OF MEASURE, the TEST OF HONESTY IN THE DEBTOR. Unforeseen losses, or bad debts, may overtake every man in trade, but no circumstance can justify the obtaining credit by persons in insolvent circumstances.

The proposed alteration in the law of debtor and creditor, so far as it has hitherto been argued, appears to be founded upon *moral law*; if such be the case, and the intention be to *separate* the honest from the dishonest debtor, where is the HONEST DEBTOR who would not glory in showing that, by his *then* apparent means, he was justified in contracting a debt? or where is the DISHONESTLY INTENTIONED MAN, who, with a certain knowledge before his eyes, that upon his own evidence his own conviction must depend, would not shrink from the commission of a crime of which his own evidence would also measure the punishment.

It is an easy matter for persons not conversant with trade to state, that creditors should be more cautious in giving credit, but let any one of those persons examine the schedules of insolvents, and they will then find among the creditors the names of the most experienced and cautious wholesale houses, of men not pushing trade upon *unguarded credit*, but whose experience entitle them to the fullest credit for discriminating judgment; I will illustrate this assertion by a positive fact: a person possessed of extensive premises and who had carried on a steady trade for some years, obtained credit, he was pressed for payment, and it was then found that he had been insolvent for some years, and that since he had a full knowledge of his insolvency, he had contracted debts to a considerable amount; among his principal creditors were men of the first experience, who had the best means of obtaining information; previous to insolvency, the state of the debtor's affairs were known only to himself; yet the law takes no cognizance of the culpability of obtaining credit under such circumstances; and thus it is that persons in *desperate circumstances* are encouraged by the laxity of the present law to increase the losses of their creditors. How different would have been the result to the creditors! How less degraded would the situation of this

debtor now have been, if the fear of self-conviction had presented itself to his view, and a scale of punishment graduated according to his assets.

No one is more truly sensible of the debt of obligation due to the learned Attorney General, for his manly perseverance in attempting to improve the law of debtor and creditor. No one has greater confidence, in his high legal discrimination. No one has a higher opinion of the judgment of the great commercial characters by whom he is surrounded, and I trust, assisted by in the House of Commons, than the writer of these observations; yet with the utmost deference to the soundness of the Attorney General's law, and with the fullest confidence in the experience of his commercial coadjutors, I will take the liberty to assert, that the *height of their position* places them *above* the reach of details, which however individually insignificant, collectively form a vast aggregate!

To verify this assertion, look at the immense amount of debt annually absolved in the Insolvent Court; investigate the schedules of the debtors, and it will there be found, that this immense aggregate is created chiefly by debts comparatively small in themselves. Arguing upon the truth of this fact, I submit that the tradesman, who is himself deeply interested in the preservation of *good faith* and of *strong law* between debtor and creditor, and who can only meet his own engagements to the same extent as he is himself met by others;—that the experienced commercial traveller, whose life has been spent in intercourse with every description of honest as well as dishonest debtors, and whose self-interest has sharpened his discrimination, or whose defeat by one dishonest debtor, has supplied him with tact to oppose another, such persons, I submit, are the most competent to detail facts upon which to found a correct judgment. "Prevention is better than cure" says the adage; now if there be truth in this position, would not the law, which would work towards prevention, be more humane, as well as more serviceable, than the law which would work only to vindictiveness or to useless redemption.

It is wisely said, that "the only way to keep some men *honest*, is to prevent their becoming *dishonest*." It would be harsh indeed to apply this saying to every man who

may happen to become embarrassed. Yet however much might be said of the want of caution on the part of creditors in giving credit, I would ask any lawyer, or commissioner, or merchant, whether it be possible to maintain our commercial station, without giving and receiving credit throughout the whole ramifications of trade? Assuming the necessity of credit, I will next ask, who can point out any other mode of judging of a man's worthiness *to credit*, than the respectability of his references, the apparent stability of his profession, the appearance of business habits, and the regularity of his former payments? Again, assuming the truth of this position, I will once more ask, is the creditor to ask his customer, "are you solvent? are you an honest man? are you contracting debts which you have the means of paying?" Upon the answer to these questions hangs the whole *moral faith of debtor and creditor*. To ask them before *insolvency* would be to imply insolvency—that is, to imply an insult to which no honest man would submit: but to the dishonestly-intentioned, it would be met by an artful evasion, or by a direct lie!

It is impossible to consider any subject more immediately or more materially affecting the interest of every class of the community, from the peer to the peasant—from the merchant to the mechanic—from the wholesale to the retail tradesman, and so on throughout every class and grade of the community, than the law of debtor and creditor. Although a discharge from the Insolvent Court is generally considered to apply to cases, where the more expensive process of bankruptcy may be avoided, yet the fearful increase of debts sought to be discharged through the Insolvent Court, bespeaks a *growing evil somewhere!*

That a carelessness—a recklessness of insolvency—is every day becoming more apparent, is a fact so generally known, that the hue and cry of public opinion has been risen for a change in the law. Yet however loud the cry for change, *no specific remedy* has been recommended. True it is a provision is advised to guard against cases of fraud, but on this point there is no material change. The law is at present *sufficiently rigorous* in cases of *convicted fraud*. The difficulty lies in the *undefined construction*, and hence in the *con-*

viction of fraud. Every one conversant with trade knows that the greater part of his losses, by bad debts, are incurred by persons who, upon a declaration of insolvency, contrive to show that they were insolvent at the time they contracted their debts. It is against this species of fraud which the law has not made provision, and against which, until the law adopts some *substantial punishment*, no restraint will be put upon the wanton speculator. Until the "onus probandi" be thrown upon the debtor himself—until the debtor shall be compelled to show, that at the time he contracted a debt he was not *acting dishonestly*—until then I contend that due justice will not be administered between the honest and dishonest debtor, no more than between the creditor and the debtor. Until this be done, legislators may devise new Acts of Parliament—lawyers may concoct special clauses—but the fair trader will not be one tittle the better for their labours. I will ask any legislator to relieve himself from the tiresomeness of framing a law, by taking a walk through the Metropolis, and making enquiry as he proceeds of the various shop-keepers; he will find in the whole line, from west to east nineteen-twentieths interested in the payment of small debts,—the merchant and the wholesale tradesman being dependent upon the punctuality of the shop-keeper, and the shop-keeper dependent upon his lesser customer; thus it is that the immense bulk of commercial wealth being dispersed into *minor* channels, it is only through the *minor* channels being kept pure and uninterrupted, that an honest circulation of the system can be preserved,

And here let the legislator pause, let him descend from his loftier calculations of larger sums, (large only by his own comparative views of sums and of circumstances) to the minor, to him the more insignificant, small debts due to the petty trader. How were these debts contracted? not from a knowledge of or a belief in the wealth of their still lesser customers, but in the good faith, that although they were poor in goods and chattels, they were not so devoid of good faith as not to apply a portion of the produce of their future labor to the payment of their just debts. Where is the shop-keeper who has not upon his books a certain portion of debtors who, having obtained credit by specious tales,

evade payment by every species of *dishonest ingenuity*? Is it not by the law alone that such persons, dreading their own personal inconvenience by imprisonment, are at present forced to pay by instalments, that which they cannot pay in one sum; and what would the abolishing imprisonment for debt do in such cases? at one fell swoop it would erase from the books of shopkeepers small debts which, taken throughout the kingdom would be of tremendous amount. But the shopkeeper does not repine, he does not murmur at the change, he is too well aware of the inefficacy of the present law, he only says, "if you take from us the right of imprisonment, *excepting in cases of fraud*, take from us also the expense of proving a fraud," let the debtor prove his own case, let him justify or convict himself, by shewing himself to have been justified or not in obtaining credit; if he has acted honestly he cannot suffer, if dishonestly it is right he should suffer; the result would be beneficial to the creditor, and it would be no less encouraging to the honest debtor, than it would prevent an increase of that demoralization which the laxity of the present law encourages;—it would, by rewarding good faith, check the progress of its violation, and by making the honest more successful, than the dishonest, in their pursuits, imperceptibly lead the dishonest to follow a system more advantageous than their own.

Be it observed that the same rule of argument applies throughout the kingdom, as to the metropolis thereof; the immensity of importance attached to this question can only be measured when the immeasurable wealth of the nation at large is ascertained.

Credit being a verisessence emanating from good faith it is essential to preserve *good faith* unimpeached. Few practical men would be disposed to give credit to another beyond that sum which the comparative circumstances of his customer would justify, but how is he to ascertain whether the external comparative circumstances of his customer are *real or assumed*? he cannot inspect his books, he cannot question him as to his solvency, he cannot ask him the extent of his engagements; he can but rely upon his own general observation of circumstances, and the general *good faith* which ought to exist between man and man. The preservation of this good faith is the *true basis of commercial credit*; its preservation

should therefore be the basis of all law, its violation should call down the punishment due to an infringement of a sacred principle. Without credit the rogue is on the same footing with the honest man, inasmuch as the rogue can purchase as many goods with the same money as the honest man, but the honest man can obtain credit in due proportion to his *real capital*, which the rogue cannot do! Credit being capital, the honest man gains an advantage over the rogue, thus honesty is encouraged and dishonesty abashed; it should therefore be the end and aim of legislation to promote good faith.

No trader when he gives credit presumes upon his customer confining himself within the strict limits of *his positive capital*; he calculates upon his customer asking a credit proportionate to his real capital, and he relies upon the integrity of his customer in not violating the confidence placed in him: upon the mutual *preservation* of this *good faith the whole law of debtor and creditor depends*.—*The debtor only* can know whether or not he is *violating its sacred principle*; its violation cannot be known *till insolvency takes place*, and then it behoves the law to visit the delinquent with such punishment, as may deter others from a repetition of the offence.

The inequality, the pernicious tendency of the law as it now stands, bears hard upon the honest though unfortunate debtor, inasmuch as it assigns to punishment, *before trial*, the man whose misfortunes have been caused by circumstances over which he had no control, in no less degree than it does the man who *upon his trial* shall be convicted of the grossest frauds.

But is there no mode by which the honest can be distinguished from the dishonest debtor *before trial*? is there no graduated standard by which, upon conviction *only*, the quantum of crime shall regulate the measure of punishment? There are two kinds of debtors, both of which, in a *monied sense* are equally injurious to the creditor, but certainly, in a *moral sense*, are not equally culpable; I mean the debtor who, having no property of his own, wantonly speculates upon the property of his creditors, and the debtor who contracts a debt having neither means or intention of paying it. The effects produced in both cases, are alike injurious to the creditor.

It has been shown that, previous to insolvency, no man has a right to question the solvency of his customer, but surely, after insolvency, it behoves the debtor to shew that, to entitle himself to his discharge from his liabilities, he contracted his debt in the *perfect good faith* of his being able and willing to discharge them; that he had not assumed colors into which the customs of trade did not BEFORE permit enquiry; that he had a fair prospect, either from his possessions or from the profits of his trade, of discharging them; and if it could be fairly shewn that from unforeseen losses alone he had been prevented doing so, I think, there are few creditors who would urge an opposition to his discharge.

Is it not an axiom of the criminal law, from felony down to petty larceny, to measure the quantum of punishment by the quantum of crime! And where is the moral distinction between the swell-mob-pick-pocket who, in the street, under the false colors of a good coat, insinuates his fingers into your pocket, or the swell debtor who, under colors no less false, contrives to pick your pocket in a legal manner? True it is, that the impossibility of carrying on trade without credit, creates a necessity for obtaining it, and hence a temptation is held out to the speculative and to the unprincipled to hoist false colors.

It is only by striking at the root of the evil that a *cure* can be effected, and this can only be done by removing the expense, and the difficulty of the aggravating obstruction of the law, from the shoulders of the creditor to those of the debtor; let the debtor, upon insolvency, shew, that at the time he contracted a debt, that his circumstances justified his obtaining credit; and upon *this plain, this simple pledge of good faith*, I would pin the whole law of debtor and creditor;—upon his own showing, I would give every debtor an opportunity of proving himself an *honest*, though an *unfortunate*, man; and thus by the strength of his own evidence, he should establish his own integrity. For example, *I would ask, was he at the time he contracted a debt, in a situation to pay 15s. in the pound? and upon his proving an affirmative, his degree of punishment should be light, if he could have paid but 10s. the INCREASE of punishment should be in the ratio of the DECREASE of his then*

assets; but to him who could have paid no more than 5s. he should be treated as an unprincipled person, who contracted a debt, having neither prospect, or intention of paying it!!! Most important advantages would arise upon such a system of self-conviction, and of a graduated punishment.

The law, which, as it now stands, invites the debtor to conceal, or to place, his property, beyond the reach of his creditors, would, upon the principle proposed, drag it to light;—the expense and loss of valuable time to the creditor, and the difficulty and the uncertainty of proving a case would no longer be a bar to conviction. Let me ask any experienced creditor, if it were not the trouble, the expense, and the loss of time, which deterred him, in most cases, from increasing his loss, by opposition, in the Insolvent Court? and hence arises the escape of so great a proportion of unopposed fraudulent debtors.

Presuming a case, that A, with no intention of committing a fraud upon B, asks credit to a small amount, dependent upon the answer of his referees being satisfactory, an account is opened, and, as confidence increases, so the account itself swells in amount; in a short time A fails, and then B discovers that A has been speculating, not upon his own real capital, but upon the *good opinion of his friends*, and thereby upon the property of his creditors. An instance of this kind has lately come within the immediate knowledge of the author of these observations; a young man, who had lived some years as confidential servant in a house of some standing, married a woman of respectability; he took a shop, and as the various tradesmen, who had supplied his former employers, were aware that his habits were business-like, sober, and industrious, and coupling this with the reasonable supposition, that, being of frugal habits he had saved a something in service, and also adding thereto a moderate addition of fortune from his wife, he had no difficulty in opening accounts with the tradesmen of his late employers; in three years he became embarrassed, and it then turned out, that he had not twenty pounds of his own when he commenced business; this I call a case of *wanton, unjustifiable speculation by a debtor upon the property of the creditor*; had a system of law, carrying out the principle of *self-conviction*,

been before his eyes, the chances are, that he would not at this moment have been degraded as an insolvent, nor would he, up to the date of his insolvency, have been living upon the capital *stock, not of himself, but* of his creditors. Instances of this kind are daily occurring, and however much it might be desirable to rescind the present law of imprisonment for debt, nothing can be more dangerous to the true interests of trade, than not to reserve some restraint upon the debtor, who cannot shew justifiable grounds for having obtained credit.

So much for the debtor who (with no intention of fraud) injures his creditors by unjustifiable speculation. Now let us see how the law of *self-conviction, and a scale of graduated punishment, founded thereon*, would restrain the unprincipled debtor, or the premeditating swindler. If A has an intention of fraudulently obtaining credit for goods from B, with no intention of paying for them, he would first ask himself, what would be the chances of evading detection? and secondly, if detected, what would be the consequences of detection? He would, upon the principle before suggested, have every chance of proving himself an honest man, and, upon his failing to do so, he would know the measure of punishment before the commission of the crime. I will illustrate an example of this nature, by a case which came under my own knowledge: a man who had for some years carried on rather an extensive trade, and who, in the usual routine of business, had for years been in the habit of ordering a large quantity of goods from his different wholesale tradesmen, suddenly increased the amount of his orders; within a few days after his orders were executed he closed his shop; it then turned out that he had systematically prepared himself for the Insolvent Court. Some of his creditors, indignant at the fraud, made him a bankrupt. It was proved that, in the regular trading of his shop, he could not have sold so large a quantity of goods as he had received, within a few days of his declaration of insolvency;—nay, it was even shown that hired carts had clandestinely removed the goods in the night-time; it was also proved that he had obtained credit for the goods at a time when he was concealing himself from some of his creditors. Notwithstanding these and other strong facts, he was permitted to pass the Bank.

rupt Court. He yet remained a prisoner in the King's Bench, at the suit of a detaining creditor. His principal creditors having expended much money, and lost much time in unavailing opposition in the Bankrupt Court, were advised by their attorney not to waste further time or money, in useless opposition in the Insolvent Court. He was thus permitted, according to the slang phrase of the prison, to walk over the course to the great discouragement of all creditors, and to the no less encouragement of all unprincipled debtors. Surely had the "onus probandi" been thrown upon this debtor, he would not have trifled with his own personal comfort so wantonly as he had with the property of his creditors. It is by cases of this kind that the present law injures the creditor, no less than it aggravates the misfortunes of the honest though unfortunate debtor.

So long as cases such as the above are suffered to go unpunished, it is idle in the extreme to throw the blame upon the credulity of the creditor. To exemplify a case more strongly, I will mention one more out of many similar cases which have come within my own knowledge. A man wrote to a wholesale house, requesting goods to be sent, for which money was paid; his orders were continued weekly, and the amount regularly paid; credit was, after some months, asked, and a reference given to a tradesman occupying a house in a leading street in London; the reference corroborated the facts stated, which were, that the party requiring credit was entitled to a property left him by will; and if any doubt remained on the mind of the creditor, it was removed by seeing the party requiring credit, purchasing land and building upon it. It eventually turned out, that the whole gang were an organised set of swindlers, who having obtained land, building-materials, and goods, upon credit, and which were again sold to some of their own crew, suddenly decamped with their booty; it was only by a well arranged combination among the creditors, that this man being convicted of repeated acts of swindling, is now doing penance in a gaol for his crimes. It is to those only who have taken a part in such proceedings, that the expense and loss of time can be known; to such only is it known that the want of unanimity among creditors, so often-

times opens a door to the escape of the delinquent. Who, under such circumstances, can charge the creditor with want of caution?—who will maintain that such a state of law does not hold out a strong temptation to the dishonest?—or who will be bold enough to assert, that a high bonus is not offered to the *embarrassed* to become *dishonest*?

By some it might be argued that a principle of *self-conviction* is unjustifiable, but let it be remembered that insolvency is strong presumptive evidence of an *unjustifiable act*, and surely there can be no injustice in allowing a debtor to justify his own acts, neither can there be cruelty in awarding punishment, in proportion to the absence of justification: the principle is established in the law of libel.

It is only from the dearly bought test of practical experience that the defects in any law can be ascertained; but in proportion as the knowledge of these defects becomes known on the one side, (that is on the creditor's side,) so on the other side, (that is the debtor's side;) this same knowledge affords an opportunity of turning to bad account the good intentions of the law; for example, a regularly organized gang of swindlers, with their attorney to boot to guide their councils and to wrong their opponents, is established in the metropolis, and that, with no *inconsiderable monied capital*. Their system is to take shops, to apply for goods on a *first account upon money terms*, and to pay their accounts regularly for some months; confidence being thus established, a moderate *credit* is required, reference is given to apparently respectable tradesmen, or to a gentleman, represented as possessing property, in some distant town; the creditor writes to his agent in the town mentioned, and finding that the reference is correct opens a moderate credit account, which is ingeniously increased, till at length, when the creditor is supposed to "*weigh his weight*," the account is paid closely up, and therewith follows a large order. The next time, after this large order has been delivered, when the creditor calls, he finds the shop closed, his customer has flown with all his goods in the night-time. Several instances of this kind have lately occurred wherein the debts individually

did not average more than from £20 to £50, yet the gross amount obtained amounted to many hundreds. They who are ready to censure the credulity of creditors under such circumstances should take into consideration that houses of the first experience in the metropolis have been the dupes of such parties.

Nor does the system of removing goods, in the night time, rest only with the swindler; it has now become a common, a growing practice, for persons who have become embarrassed to remove themselves and property clandestinely, and in nine cases out of ten it will be found that the removal has been anticipated by increased orders to their creditors, indeed such are the difficulties, the expense, and uncertainty, of following and discovering such persons that few creditors, whose time is of value, would waste it in useless search. Hence arises the necessity of making it a high offence to remove property in the night time, and indeed a wise restraint might be added requiring a debtor by written notice, within a month of his removal, to inform his creditors of his *then* place of residence.

Whatever might be the mode of punishment adopted by the proposed law, it is to be hoped that a system of *productive labor* will be substituted for *unproductive imprisonment* and that a portion of the proceeds of that labor will be applied to the partial discharge of the claims of the creditors. It should be borne in mind that upon the principle herein suggested *no punishment can follow excepting upon conviction*. No system therefore can be more just towards the creditor, or more terror-striking to the unjust debtor, than to make the punishment, that is the labor of the unjust debtor, subservient to an act of honesty towards his creditor.

Throughout these observations I will challenge the most fastidious to find one suggestion bearing severely upon the *honest though unfortunate debtor*, and repeating the position I had assumed in the outset, "*that few persons would prefer revenge to money*." I think the honest debtor would have but little to fear. Being accessory before the fact or concealment after the fact are high offences in the criminal code. Is not the severity of the law towards both these classes of offenders founded upon one and the same principles,

upon the principle, that as they themselves only can impart that knowledge, either to the prevention or to the retribution of crime, so the law in order to obtain that knowledge has made *persons, otherwise innocent, guilty only* by concealment of the fact.

And why not apply the same principle of legislation to the debtor, to the only living creature who can be accessory to the true state of his own circumstances *at the time of obtaining credit?*—And why not make the concealment an offence punishable in proportion to the injury inflicted?

Such an application of principle would make the swindler measure with due caution the consequence of his premeditated fraud; it would restrain the speculative from trifling with the property of his neighbour; and lastly, it would, by giving renewed confidence to the creditor, infuse healthful vigour into the general credit of the country. It would be an intervention of the law no less charitable, or less humane, toward the honest debtor, than it would be just towards the creditor.

THE END.

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Imprisonment for Debts Bill. Two sides
to a question.

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